

BEFORE DENISE JUNEAU, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

ELAINE VANDERSNICK	)	
Appellant,	)	
	)	OSPI 321-09
vs.	)	
	)	<b>DECISION AND ORDER</b>
GARDINER SCHOOLS BOARD OF	)	
TRUSTEES,	)	
Respondent.	)	

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Having reviewed the record and considered the parties' briefs, the Superintendent of Public Instruction issues the following decision and order:

**PROCEDURAL HISTORY AND STATEMENT OF FACTS**

Elaine Vandersnick ("Vandersnick") was employed by the Board of Trustees of the Gardiner School District ("Gardiner Board") initially as a cook then as head cook/kitchen supervisor from August, 1996 until June 8, 2009 under a series of annual contracts. From 2002 through June of 2009 Vandersnick was the Head Cook/Kitchen Supervisor. During the 2008-2009 school year, Vandersnick filed a grievance against Gardiner Superintendent Leland Stocker. An investigation was conducted as a result of the grievance. On July 23, 2009 the Gardiner Board approved raises for classified staff. Vandersnick's name was not on the list of classified staff. On July 28, 2009 the Gardiner Board advertised for a Head Cook. On July 29, 2009 the Gardiner Board Chairman met Vandersnick at the school and requested that she remove personal items from the kitchen office. On September 9, 2009 the Gardiner Board hired co-head cooks. Vandersnick appealed the Gardiner Board's decision to the Park County Superintendent on September 19, 2009. Park County Superintendent, Ed Barich determined that Vandersnick's appeal had not been timely filed and declined the appeal. Vandersnick requested County

Superintendent Barich reconsider his decision by letter dated September 28, 2009. Park County Superintendent Ed Barich again denied the appeal based on timeliness on October 2, 2009.

Vandersnick filed her notice of appeal with this office on October 8, 2009.

The State Superintendent issued a Notice and Briefing Schedule, the parties submitted briefs, and this matter is now at issue.

### **ISSUES ON APPEAL**

Did the County Superintendent err in his decision to dismiss the appeal after finding that Vandersnick had not timely filed her appeal?

### **STANDARD OF REVIEW AND AUTHORITY**

The State Superintendent of Public Instruction's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in Mont. Code Ann. § 2-4-704 and adopted by the State Superintendent in Admin. R. Mont. 10.6.125.

The State Superintendent may reverse or modify the County Superintendent's decision if substantial rights of Vandersnick have been prejudiced because the conclusions of law and order are (a) in violation of constitutional or statutory provision; (b) in excess of the statutory authority; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable probative and substantial evidence on the whole record; (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or (g) affected because findings of fact upon issues essential to the decision were not made although requested. Admin. R. Mont. 10.6.125(4).

### **CONCLUSIONS OF LAW AND OPINION**

**Issue: Did the County Superintendent err in his decision to dismiss the appeal after finding that Vandersnick had not timely filed her appeal?**

No. The County Superintendent's decision to dismiss the appeal was correct. Regardless of other potential issues, Vandesnick's appeal was not timely filed.

The procedure for filing an appeal is found in Montana Administrative Rule 10.6.103.

10.6.103 INITIATING SCHOOL CONTROVERSY PROCEDURE PROCESS

(1) A person who has been aggrieved by a final decision of the board of trustees of a school district in a contested case is entitled to commence an appeal before the county superintendent.

(2) A school controversy contested case shall be commenced by filing a notice of appeal with the county superintendent and the parties within 30 days after the final decision of the board of trustees of the school district is made.

Vandersnick's contract expired June 8, 2009 and was not renewed as it had been for the previous 13 years. The district historically offered renewal contracts to classified employees during the summer months. Other classified employees were offered renewal contracts following the July 23, 2009 board meeting.

Vandersnick's September 16, 2009 letter to Park County Superintendent Ed Barich initially states that she is appealing a grievance decision, but then goes on to say that no action was taken on her grievance. She further asks that "formal action be taken regarding my employment. There has never been a public vote or discussion by the Board."

The record does not reflect that any direct action was taken at a school board meeting regarding the renewal or nonrenewal of Vandersnick's contract. In July, the Superintendent presented a list of classified employees to the Gardiner Board and recommended that they be given a raise. The Board approved the raises for the classified employees named on the list at the July 23, 2009 meeting. According to Vandersnick, at the time of the meeting the board was not aware that her name was not included in the list of classified staff. However, the head cook position was advertised on July 28, 2009. Using either of the July dates, Vandersnick's appeal of the non-renewal of her contract was not made within 30 days.

Vandersnick argues the date to calculate the deadline for filing an appeal should not begin in July. She claims the board never made a final decision about her employment. Without a decision by the board to not renew Vandersnick's contract, the County Superintendent would have no jurisdiction over this matter. ARM 10.6.103 provides that appeals to the County Superintendent must come after a "final decision of the board of trustees."

In the alternative, Vandersnick alleges that the time for appeal should be calculated from the date the board voted to hire co-head cooks on September 9, 2009. Vandersnick claims she did not know she was not being rehired until the September 9, 2009 board meeting when the board approved contracts for new co-head cooks. This is inconsistent with Vandersnick's statement that shortly after the July 23, 2009 meeting, she discussed with the Gardiner district

board chairman that her name was not on the list of classified employees considered for raises in their new contracts, and that the head cook job had been advertised in the newspaper. His response to this was to ask her to meet him at her office in the school on July 29, 2009. When she met with him he asked her to remove her personal items from the head cook's office. Vandersnick cannot dispute she received actual notice at that time that her contract was not being renewed.

Regardless of the date used to calculate notice of Vandersnick's contract non-renewal, she failed to file her appeal within the 30 day timeline. Vandersnick's appeal is dismissed.

DATED this 22nd day of April, 2010.

/s/ Denise Juneau  
Denise Juneau,  
Superintendent of Public Instruction

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that on this 22<sup>nd</sup> day of April, 2010, I caused a true and exact copy of the foregoing NOTICE AND BRIEFING SCHEDULE to be mailed, postage prepaid, to the following:

**Alex Rate**  
**303 West Mendenhall Street, Suite 1**  
**Bozeman, MT 59715**

**Jeffrey A. Weldon**  
**Felt, Martin and Weldon**  
**PO Box 2558**  
**Billings, MT 59101**

**Gardiner Public Schools Board of Trustees**  
**510 Stone Street**  
**Gardiner, Montana 59030**

**Ed Barich**  
**Park County Superintendent of Schools**  
**414 East Callender**  
**Livingston, Montana 59047**

/s/ Beverly J. Marlow  
Beverly J. Marlow, Paralegal